

IN THE SUPREME COURT OF THE  
STATE OF OREGON

**OREGON SOCIETY OF  
ENROLLED AGENTS,**

Petitioner,  
Respondent on Review.

v.

**STATE OF OREGON, acting by and  
through the STATE BOARD OF TAX  
PRACTITIONERS,**

Respondent,  
Petitioner on Review.

CA A156623

SC N006707

**RESPONSE TO PETITION FOR REVIEW  
OF THE OREGON SOCIETY OF ENROLLED AGENTS**

Opinion Filed: February 1, 2017

Author or Opinion: Egan J.

Before: Armstrong, Presiding Judge, Hadlock, Chief Judge, and Egan, Judge

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October 2014

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## SUMMARY OF THE RESPONSE

There is no good reason for the Supreme Court to accept review of this case. The Oregon Society of Enrolled Agents prevailed in the Court of Appeals on a simple statutory interpretation question where the court ruled that the Board of Tax Practitioners had acted outside their statutory authority. Opinion ¶ 1. As argued by ORSEA, the Court of Appeals invalidated OAR 800-020-0015(5) and ruled that Internal Revenue Service licensed enrolled agents are exempted from the work experience requirement by ORS 673.637(2). Opinion p.8 1.16-19. The Court of Appeals did not reach the other question of whether the state's actions were pre-empted by federal law. That federal law question would remain unanswered even if somehow this case was reversed or remanded.

One of the first reasons there should be no review of this case granted is that even before the Court of Appeals issued its decision, the Board amended the administrative rule that they now ostensibly seek to preserve. OAR 800-020-0015(5) is not the same now as it was before and during the appeal briefing which demonstrates the Board's continued effort to keep this rule despite the ruling of the court on the requirements of the statute. Furthermore, the factual question is not an issue that will arise often, even though keeping administrative agency within the confines of their statutory authority is an important principle. That check and balance has already been served in this case.

Second, the Board already admitted that there is no statutory requirement,

and requested that the legislature add a “proof of work-experience” provision to the statutes.<sup>1</sup> While a facial challenge to the validity of an administrative rule does not include an adjudication of facts, the Board’s own statements show that it failed to convince the legislature to change the law and the legislature declined to do so. If the legislature wanted to enact a law the way the Board of Tax Practitioners wishes the law read, then they would have or could have done so. The fact is that the legislature can fix this issue if it truly has the intent that the law be read the way the Board suggests it be read. The Oregon Legislature is in session every year, if the Board wants the law changed, they should change it the proper and legal way.

Last, the thrust of the Board’s Petition for Review constitutes the Board’s attempt to convince this court of the righteousness of their public policy position. The Board relies upon websites such as the Huffington Post for their need for this policy. The declarations that were in the record went uncontested that the rule had a protectionist and exclusionary effect, and that Enrolled Agents were highly qualified tax professionals, and the only federally licensed and regulated tax professionals. The Board’s arguments based on their preferred public policy should be rejected.

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<sup>1</sup> Appendix page A20.

## FIRST RESPONSE ARGUMENT

### 1. The Court of Appeals correctly interpreted a relatively simple statute.

The Court of Appeals unanimously explained in its opinion that,

“the text of ORS 673.637(2) establishes that the board *shall* license any person who has fulfilled the following requirements: (1) the person must be "enrolled to practice before the Internal Revenue Service pursuant to 31 C.F.R. part 10," (2) the person "has passed to the satisfaction of the board" the examination, and (3) the person has complied with the requirements provided in ORS 673.605 to 673.740, *except for* ORS 673.625(1) and (3).

*Or. Soc'y of Enrolled Agents v. State*, 283 Or App 558, 562 (2017). The Court pointed out that those three requirements were all the substantive requirements that the statutes allowed when that statute used the word *shall*. This was a very simple and clear interpretation of the text. The court analyzed the Board's contrary arguments and pointed out that it was “compelling” that the legislature distinguished both mandatory and discretionary actions in that same statute by using “shall” and “may” in different places in the same statute such as (The Board *shall* license as a tax consultant any person who is \*\*\* enrolled to practice before the Internal Revenue Service.”) as compared to (*may* issue a license as a tax consultant who presents evidence that they are licensed in a state that has substantially similar requirements for licensing). *Id* at 563.

Accordingly, this is not a novel question of statutory interpretation, nor is this a novel issue at all. It is merely another example of where a state Agency went beyond the authority that the legislature gave to them in the authorizing statute.

## SECOND RESPONSE ARGUMENT

**2. The Board fails to cite any rule of law explaining how or why the court of appeals erred, instead the Board merely suggests the statute should be re-interpreted because of the “importance” of the Board’s policy position.**

The Board tries to make the case that its 360-hour work-experience requirement is a super-important policy so the court should accept review. In reality, all the Board is doing with their importance argument is repeating their previous political appeals for a policy change. The legislature directly rejected and ignored these policy requests from the Board and this is part of what made the statutory interpretation so clear in this case. Only when legislative intent is unclear from the text of a statute, the Court should consider the legislative history to interpret the statute’s meaning. *State v. Gaines*, 346 Or 160 (2009). Although the text is clear here, even when reviewed the legislative history also supports invalidating the board’s 360-hour rule. The court does not turn to the preferred public policy of one of the parties to determine the meaning of the statute, but looks at the context of the words being interpreted in the statute. The Court of Appeals called this analysis “compelling” in favor of ORSEA’s position. Respondent has even pointed out, the legislature has indeed given lengthy consideration to crafting ORS 673.605 to 673.740 to “protect the public from inexperienced or ill-prepared tax preparers.” Resp. Br. 10. Respondent explained that due to the board’s expression of concern that it had no control over “the degree of expertise of enrolled agents,” and so the “Legislature imposed an

examination requirement on enrolled agents.” *Id.* Respondent argued that this change “demonstrates that the legislature is concerned about protecting Oregon taxpayers from inexperienced tax preparers.” However, as concerned as the legislature may have been about protecting taxpayers from inexperienced tax preparers it *specifically exempted* enrolled agents from a work experience requirement and, although it has enacted other requirements applicable to enrolled agents, it has never reinstated the work experience requirement. In fact, in 2011, the legislature increased the work experience requirement for other applicants for licensure as a tax consultant from 780 hours to 1,100 hours, but the legislature did not impose *any such requirement* on enrolled agents. *See* House Bill (HB) 2066 (2011). The Board knew of the legislature’s rejection of their ideas for such a requirement on Enrolled Agents. Yet the Board proceeded when they knew they did not have authority. The board noted that,

“The bill [making the 360 hour work experience requirement a law] did not make it out of committee, thus will not become law. The Board members would like to retain the 360 hour requirement regardless of the absence of the requirement in the statutes. Appendix A 26 (the May 9, 2013 Tax Board Meeting Minutes).

Respondent is correct that the legislature was concerned with protecting taxpayers from inexperienced tax preparers, and in response to that concern, the legislature has enacted laws to affect its intent -- even though that intent did not match with the desires of the Board. Now the Board wants a new interpretation. None of those laws relating to Enrolled Agents included a work experience

requirement, but expressly were written into the statute for the other types of tax preparation professionals who are not licensed by the federal government. Legislative commentary about tax preparers expressly distinguishes those persons from an enrolled agent. (*See e.g.* ORS 673.605 (definitions of tax preparer and tax consultant) and ORS 673.637(2) (makes a distinction about tax consultant who is also an enrolled agent)). The House Committee on Business and Labor considered HB 2214 considered the Oregon State Board of Tax Practitioner’s testimony which specifically stated that “Enrolled Agents with little or no actual experience preparing income tax returns are allowed, after passing the Board’s exam to be licensed as a Tax Consultant and work without any supervision”. Exhibit 2. The Board knew they weren’t within their statutory authority. If anything, the legislative history shows the legislature decided *not* to enact a work experience requirement for enrolled agents only after careful consideration. The legislature intended to limit the licensure requirements for enrolled agents to those listed in ORS 673.637(2), and the Board does not have the authority to do override the legislature.

Here, the Board argued that because the enabling statute grants the board the power to adopt rules “necessary to carry out the provisions of ORS 673.605 to 673.740,” that somehow the legislature also gave the Board the authority to create a new regulation which requires enrolled agents to have and provide proof of 360 hours of work experience. While the legislature has given the board broad

power to carry out the terms of statute itself, the board “may not, by its rules, amend, alter, enlarge, or limit the terms of a legislative enactment.” *Univ. of Or. Coop. Store*, 273 Or at 550. Although the board may “write rules and enforce them...[it] may not undertake anything contrary to the statute itself.” *Joint Council of Teamsters No 37, v. Or. Liquor Control Comm’n*, 46 Or App 135, 139 (1980).

As explained both in Petitioner’s Opening Brief and in the court’s own opinion, the 360-hour rule substantially changes the law as the legislature enacted it and is contrary to the statute. The history of the statute shows clearly that the legislature specifically exempted enrolled agents from a work experience requirement. Thus, the legislature even addressed its concerns about taxpayer protection by amending the current law to increase the work experience requirement for other applicants; however, it left ORS 673.637(2) unchanged leaving enrolled agents free from any work experience requirement at all. *See* HB 2066 (2011).

The Board misses the point when it claims that ORS 673.640(1) and 673.730(1) provide the board with such broad rule-making power sufficient to authorize the board to add to the qualifications the legislature has expressly stated for enrolled agents. They neglect to accept the fact that ORS 673.637 is a carve out differentiating in nearly every way an Enrolled Agent from the statutory terms of “licensed tax preparer” and “licensed tax consultant”. However, both of those

arguments were rejected by the Court of Appeals as those statutes relate to the licensing of persons other than enrolled agents who want to also be licensed in Oregon as tax preparers and tax consultants. See ORS 673.637(1) (explaining how licensed persons from other states “may” be issued a license and ORS 673.637(2) how enrolled agents “shall” be issued a license.

It is important and noteworthy to point out that most of the members of the Petitioner on Appeal, pointed out how the rule had a protectionist and exclusionary effect, creating a barrier to entry into the Oregon market for anyone coming from outside states or for experienced Enrolled Agents, and thereby protecting the existing Oregon preparers from competition. Appendix A1 through A20. This blocked them from selling businesses, from hiring new employees or taking on additional clientele, and otherwise protected established Oregon preparers from competition. *Id.* The Board’s hands may not be as clean as they make them out to be in their “keeping the public safe from improper practice” policy arguments. In fact, the Enrolled Agent is a highly qualified professional and the only federally licensed and regulated tax practitioner who has unlimited rights to represent taxpayers before the Internal Revenue Service and the only tax practitioners who specialize in taxation. Appendix A5.

## **CONCLUSION**

For the reasons stated above and the reasons in Petitioner’s Opening Brief, and Reply Brief at the Appellate Court, review of this case should not be granted

and the case should be closed.

Dated: April 25, 2017

Tyler Smith & Associates, P.C.

/s/ Tyler Smith  
Tyler Smith (OSB# 075287)  
Of Attorneys for Petitioner

**CERTIFICATE OF COMPLIANCE  
WITH BRIEF LENGTH AND  
TYPE SIZE REQUIREMENTS**

Brief length

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word count of this brief (as described in ORAP 5.05(2)(a)) is 2031 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

Dated: April 25, 2017

Tyler Smith & Associates, P.C.

/s/ Tyler Smith \_\_\_\_\_  
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## PROOF OF SERVICE

### Certificate of Filing

I certify that on April 25, 2017, I directed or personally caused the original of Oregon Society of Enrolled Agents's Response to Petition for Review to be electronically filed with the Appellate Court Administrator, Appellate Records Section, by using the electronic filing system.

### Certificate of Service

I certify that on April 25, 2017, I served the Oregon Society of Enrolled Agents's Response to Petition for Review, by mailing two copies, with postage prepaid, in an envelope addressed to:

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## **APPENDIX**

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IN THE COURT OF APPEALS OF THE STATE OF OREGON

**OREGON SOCIETY OF ENROLLED AGENTS,**

Petitioner,

v.

**STATE OF OREGON, acting By and Through the STATE BOARD OF TAX PRACTITIONERS,**

Respondent.

Case No. \_\_\_\_\_

**DECLARATION OF MARIE A. LINDERS**

I, Marie Linders, hereby declare:

1.

My name is Marie A.Linders. I am over 18 years old and I understand and intend that this Declaration be used in court. I have personal knowledge of all of the facts stated in this declaration. I am an Enrolled Agent, (“EA” hereafter) and have an active practice with JM Solutions LLC.

2.

I am the President of the Board of the Oregon Society of Enrolled Agents (“OrSEA” hereafter). I am charged with the upholding the mission of OrSEA which is to “Foster professionalism and growth of members, be an advocate of taxpayer rights, protect the interests of its members and enhance the role of Enrolled Agents among the government

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agencies, other professions, and the public at large". The Oregon Board of Tax Practitioners ("Board" hereafter) created OAR 800-020-0015(5). OAR 800-020-0015(5) creates an additional licensing requirement that does not exist outside of that administrative rule. This requirement does not exist in state statute, nor does any such requirement exist in federal statute, or the federal administrative rules governing our licensure. The Internal Revenue Service establishes and administers the licensing standards for individuals seeking to be a federally licensed tax practitioner (an EA). The State of Oregon added an additional qualification to utilize our license in Oregon, the rule now requires a minimum of 360 hours of work experience during two of the last five years (the "360 Hour Rule" hereafter) before EA's can legally practice on their own in Oregon. This has the potential to diminish the designation of the EA. For some EA's (primarily part time, or semi retired) the 360 hours of tax preparation could result in a delay of about three years, because the tax season runs primarily from January 15 through April 15. Thus, the 360 hour requirement, for an EA to run their own practice even after obtaining the designation of Licensed Tax Consultant (LTC hereafter) has the potential of reducing the number of qualified EA's relocating to our state as they may would have to first practice under another to gain their 360 hours of "experience". Another effect of diminishing the designation of the EA is, as an employer I am not allowed to have an EA prepare tax returns in my office without first requiring them to obtain the status of either Licensed Tax Preparer (LTP hereafter) or LTC. To obtain the designation of LTP, the examinee must pass a 100 question exam, which depending on the area in Oregon, may not be available year round,

or may require extensive travel or expense and further delays in waiting for the examination to be available. One of my colleagues reported having such an experience when relocating to Oregon, which resulted in a delay of 3 months in opening his practice in Oregon. We also have OrSEA members in Oregon who are EA's but are not "Oregon" LTC's. Even as an EA, these individuals must complete the extra step of becoming an LTC before they can utilize their existing federal license to practice on their own in Oregon. Essentially to be perfectly legal, an experienced EA relocating to Oregon, could potentially have to take a step down in pay and re-license as an LTC and then practice under another to obtain the required 360 hours of experience. Alternatively, in Oregon it makes no sense to pursue becoming an EA without first obtaining the designation of LTP, as that is the first step required in order to gain the necessary hours of experience to obtain the designation of LTC which is required for an EA to utilize their EA designation to operate a tax practitioner business in Oregon. These layers would potentially delay the ability of an EA candidate to operate in Oregon for years, thus creating a deterrent for an individual seeking the EA designation as a career choice. In summation, the 360 Hour Rule requirement, acts as a deterrent for a federally licensed EA practicing in another State, from relocating their practice to Oregon. Prior to this rule, a person could take the more extensive license route of extra study, and become much more knowledgeable about tax issues by becoming an EA and after obtaining their LTC license could then open a practice immediately. EA's can practice their profession in every other state of the United States without additional licensing; however if they come to Oregon they may not be able practice unless they are

willing to engage in additional on-the-job training for the minimum 360 hours, before re-starting their own practice. This 360 Hour rule harms our organization, members and and hinders me from being able to uphold the OrSEA mission of growing our membership, and recruiting new EA's to the state of Oregon.

3.

As I mentioned previously the additional layers of regulation placed on the EA portion of the tax practitioner industry and in particular the 360 Hour Rule, has an additional affect, which discourages a potential tax practitioner candidate from seeking the designation of an EA. As an EA I am by statute restricted from soliciting a fellow EA to work in my office without first requiring them to gain the designation of LTP or LTC. I am also limited in my ability to recruit and train qualified individuals in the field of taxation unless they first sit for the state exam and obtain their license to prepare taxes (LTP). This is accomplished by paying to sit for 80 hours of tax education and passing a 100 question exam, all with essentially no prior tax experience (the course costs are approximately \$500.00 to \$1,000.00 depending on the educator and the exam could be an additional cost). The state of Oregon's LTP exam pass rate has had a steady decline since before this rule has been in place and is down to about 50 percent from a 68 percent pass rate in 2009. So as this additional restriction is placed on the EA industry only, it in essence shuts the door on the best option we EA's as an industry have for finding and training employees. This harms my firm, the tax practitioner industry, and reduces the ability of EA's to recruit and train new employees. I recently had an acquaintance's son

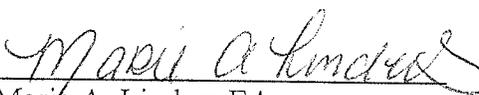
who graduated with an accounting degree from OIT (Oregon Institute of Technology). He told me he went to work for an accounting firm locally, because he was told that EA's don't hire accounting graduates. I concurred and told him it is not by choice, Oregon law does not allow me to hire an accounting graduate to do this work unless the graduate has a tax preparer's license. You see unlike EA's, CPA's and Attorneys are allowed to have mentoring programs which allow unlicensed individuals, graduate or not to input information onto a taxpayer's tax return, thus giving them an unfair advantage over EA's and elevating them to some kind of higher status in the realm of tax preparation, on no legitimate basis. *EA's are the only federally licensed and regulated tax practitioners who have unlimited rights to represent taxpayers before the IRS and the only tax practitioners who by definition specialize in taxation.* The 360 Hour Rule attempts to change that and limit our rights to represent taxpayers before the IRS if we live in Oregon by imposing additional requirements. Many OrSEA members have expressed to me that it appears that the Board (70% practicing EA's) views its mission to be protecting the exclusivity of the profession and affirmatively blocking EA's from being Tax Practitioners in Oregon, rather than ensuring the professional excellence of the profession they oversee. The Board continues to increase regulation on the EA industry in Oregon (i.e. the 360 Hour Rule) to right a problem which does not exist, when in fact the Tax Practitioner industry in Oregon they regulate, to include EA's are the model for the nation and exhibit professionalism which is the envy of many states.

4.

In May of 2013 the Oregon Legislature rejected proposed legislation which would have created statutory authority for OAR 800-020-0015(5), yet the Board has refused to remove the 360 Hour Rule, burdening our association and industry, making it more difficult to recruit new employees decreasing our revenue and profit. This rule is having the effect of driving EA's out of the state, preventing existing EA's from selling their businesses, and preventing more from even becoming EA's. This reduction in EA's decreases our membership pool and harms our organization. The rule makes it harder to find new members to join OrSEA as new or retired EA's, or part-time EA's from other states choose not to take the additional steps now required to relocate to Oregon. The 360 Hour Rule makes licensure of an EA in Oregon more complicated and burdensome than the federal license and the resulting reduction in members reduces the OrSEA organization's revenue and ability to accomplish its mission. The rule likewise without statutory authority prevents some of our members from practicing their trade in the state of Oregon, thus preempting and nullifying the Federal License obtained by the authority of the IRS.

**I hereby Declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.**

DATED this 14<sup>th</sup> day of February, 2014.

  
Marie A. Linders EA  
OrSEA President

IN THE COURT OF APPEALS OF THE STATE OF OREGON

**OREGON SOCIETY OF ENROLLED AGENTS,**

Petitioner,

v.

**STATE OF OREGON, acting By and Through the STATE BOARD OF TAX PRACTITIONERS,**

Respondent.

Case No. \_\_\_\_\_

**DECLARATION OF CANDI DAWN HAMILTON**

I, Candi Dawn Hamilton, hereby declare:

1.

My name is Candi Dawn Hamilton. I am over 18 years old and I understand and intend that this Declaration be used in court. I have personal knowledge of all of the facts stated in this declaration.

2.

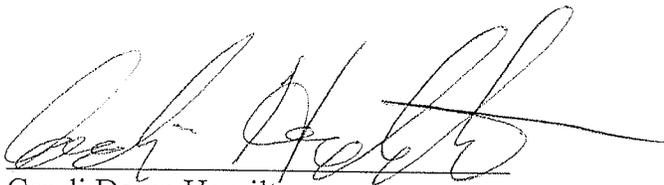
I wanted to work in a tax practice, and would have joined OrSEA. To that end I began to prepare for the Enrolled Agent exam. I also paid for and began a preparation course for passing the Enrolled Agent exam.

3.

After the enactment of the new regulations, which meant additional onerous requirements beyond passing the Enrolled Agents exam, I decided to quit the program. The number of work hours required for my Enrolled Agents license in the state of Oregon is now 360 hours. Unfortunately, it is not practical for me to work out of state. I still wish to become an enrolled agent but have more classes, which are not cheap, and a year or two of internship or volunteer work to get the hours needed before I can begin getting paid. With two young kids I just can't afford to work for free.

**I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury**

DATED this 28<sup>th</sup> day of February, 2014.



Candi Dawn Hamilton

IN THE COURT OF APPEALS OF THE STATE OF OREGON

**OREGON SOCIETY OF ENROLLED AGENTS,**

Petitioner.

v.

**STATE OF OREGON, acting By and Through the STATE BOARD OF TAX PRACTITIONERS,**

Respondent.

Case No. \_\_\_\_\_

**DECLARATION OF CATHERINE GIOVINCO**

I, Catherine Giovinco, hereby declare:

1.

My name is Catherine Giovinco. I am over 18 years old and I understand and intend that this Declaration be used in court. I have personal knowledge of all of the facts stated in this declaration. I am an enrolled agent # 2012-54288 and Oregon licensed tax consultant OBTP#LTC5064 and I have an active practice at my company Associated Services Corporation. My firm is in Lane County Oregon. I am a member of OrSEA.

2.

I moved to Oregon in August of 1990. I took a required 80 hour course in Coos Bay which I passed in order to sit for the LTP licensing exam which I passed, and was

issued an LTP license by the state board in December 1990. I worked for H&R Block in Florence, OR as an employee for the tax season in 1991. I had previously worked four tax seasons as an employee of H&R Block in Florida prior to "coming home" to Oregon. I took a course at Lane Community College in Eugene the Summer of 1991 to prepare for the LTC and EA exams. I passed the LTC exam and was able to open my practice here in Oregon. I also passed two of the then four parts of the EA exam. I passed the other two in 1992 and became an EA. That is what it took under the rules at that time in order to legally operate a tax business here in Oregon. It felt like jumping through flaming hoops that got higher and higher.

3.

Five years into my business my co-owner and I began to look for possible buyers for his shares in the business. Over a two year period, I interviewed four interested EA's, all from out of state. Three were from CA and one was from CO. When I told them about the Oregon Licensing requirements to pass the Oregon portion of the LTC exam, all of them quickly disappeared. I was unable to find a qualified individual who was willing to follow the additional Oregon requirements for an EA to be able to practice in this state. Because of these additional Oregon requirements we were unable to sell his share of the business.

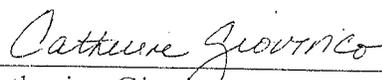
4.

I am now in my 23<sup>rd</sup> year of owning the business and at 66 years of age am considering retiring. However, if I sell this business it must be to someone who I feel is

qualified to take care of my clientele as well as I have. I would prefer for that person to be an EA. The additional requirements for hours worked is an additional serious limitation on my chance of finding a qualified out of state buyer.

**I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury**

DATED this 11<sup>th</sup> day of February, 2014.



Catherine Giovinco

EA#2012-54288

Oregon LTC OBTP#LTC5064

IN THE COURT OF APPEALS OF THE STATE OF OREGON

**OREGON SOCIETY OF ENROLLED AGENTS,**

Plaintiff,

v.

**STATE OF OREGON, acting By and Through the STATE BOARD OF TAX PRACTITIONERS,**

Defendant.

**DECLARATION OF SUSAN BLADORN**

I, Susan Bladorn, hereby declare:

1.

My name is Susan Bladorn. I am over 18 years old and I understand and intend that this Declaration be used in court. I have personal knowledge of all of the facts stated in this declaration. I am an enrolled agent # 33138 and Oregon licensed tax consultant #1677C and I have an active practice at my company Oregon Tax Specialists, Inc. My firm is in Douglas County Oregon. I am a member of OrSEA.

2.

OAR 800-020-0015(5), specifically the new 360 hour rule is preventing my firm from being able to find employees. I recently had a long time employee retire and I cannot find a licensed tax preparer or enrolled agent to fill that position. I have advertised statewide and cannot even get an applicant. I cannot employ any enrolled agent that cannot meet the new experience

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requirement. I would like to hire an enrolled agent, even if they don't have that 360 hour experience requirement because the enrolled agent card is almost proof they are qualified for the job. I can't recruit an enrolled agent as a trainee, no enrolled agent would take that step backward. I am currently seeking to hire. The state of Oregon has, by rule, added an additional qualification to utilize a enrolled agent license in Oregon, the rule now requires a minimum of 360 hours of work experience during two of the last five years (the "360 hour rule") before a new or out of state enrolled agent can be legal in Oregon. 360 hours of tax preparation could take at least two years in many areas of Oregon because the tax season runs primarily from February to April 15, and most do not find full-time work since many tax firms can only support part-time hours. There are many small firms that need part-time preparers which restricts the ability for the average seasonal tax preparer to accomplish this new administrative rule. I am in Douglas County, I do not expect to find anyone for this job opening and I will lose business by not being able to have the help I need. I contacted one of the local training facilities and they told me they had ten people start the 80 hour course where the goal is to pass that course, then pass the difficult Oregon Licensed Tax Preparer exam, just in order to legally work as a tax preparer. They told me sixty percent of those have left the program and the instructor expects only two of those remaining four to pass the LTP exam. If not for this rule, I could seek to recruit and probably hire a highly qualified enrolled agent from out of state, or have someone that lives nearby become an enrolled agent. However, the 360 hour requirement before someone could be a licensed tax preparer (LTP) or licensed tax consultant (LTC) even when they are already an enrolled agent reduces the amount of people who would want to make that kind of time commitment before they could be fully employed on a year round basis.

3.

The 360 hour rule also discourages LTP's from becoming Enrolled Agents. The enrolled agent is difficult to obtain as it is, now an LTP would have to have worked almost full time for two straight years through the tax season of February 1 to April 15 in order to obtain 360 hours in 2 of the last 5 years. Most tax preparers do not work all year round nor do they find work at firms that they can get that many hours; and especially a new licensee. The job is really only during tax season. Thus, any new person to the industry would now have to wait somewhere close to two full years to practice in Oregon as an enrolled agent, even though they could already be and enrolled agent and practicing that entire time if they lived in other states.

**I hereby Declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.**

DATED this 12<sup>th</sup> day of February, 2014.



\_\_\_\_\_  
Susan Bladorn, EA#33138; Oregon LTC #1677C

IN THE COURT OF APPEALS OF THE STATE OF OREGON

**OREGON SOCIETY OF ENROLLED AGENTS,**

Petitioner,

v.

**STATE OF OREGON, acting By and Through the STATE BOARD OF TAX PRACTITIONERS,**

Respondent.

Case No. \_\_\_\_\_

**DECLARATION OF JEFFREY LINDERS**

I, Jeffrey Linders, hereby declare:

1.

My name is Jeffrey Linders. I am over 18 years old and I understand and intend that this Declaration be used in court. I have personal knowledge of all of the facts stated in this declaration. I am the co-owner of JM Solutions LLC in Klamath Falls, Oregon and I hold the designation of Enrolled Agent.

2.

I am writing with regard to the OAR 800-020-0015 (360 Hour Rule) which has been put in place by the Oregon Board of Tax Practitioners and the harm it causes my tax business and small tax businesses like mine.

3.

My business consists of two full time Enrolled Agents, one part time Enrolled Agent and one Licensed Tax Preparer/ Bookkeeper. Our office has a client base of around 2500 and an active client base of around 1500 annually. We do tax preparation and audit representation and during tax season we are always in the position to bring aboard additional help. As our business deals with a wide variety of tax and representation issues our goal has been to recruit individuals who can not only prepare tax returns but also assist in the representation process, thus the ideal candidate would be that of an Enrolled Agent.

4.

Our work load is excessive during the months of January through April as the tax season is in full swing. We are looking for part time or semi-retired Enrolled Agents to fill this gap; however due to the regulations placed on our industry by the Oregon Board of Tax Practitioners this process has always been extremely difficult. Now with the introduction of the "360 Hour Rule" this process has become nearly impossible as the Board through this action has further degraded the designation of the Enrolled Agent in Oregon to that of a mere Registered Tax Preparer.

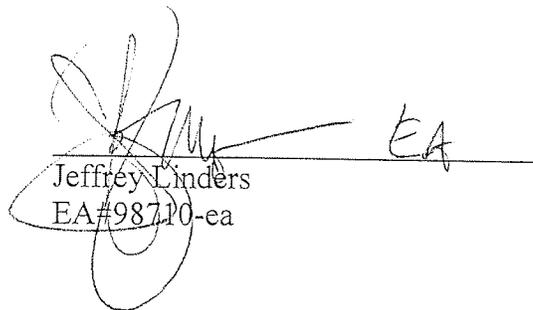
5.

My efforts to recruit individuals who are not currently in the Oregon system has been ground to a halt as I do not have the year around work to keep an individual on staff and without the required 360 hours of work experience an individual coming from

outside of Oregon would not be able to work on their own to make the potential move cost effective in the off season. This places me in a catch 22; I need the help in order to grow my business; however without being able to recruit the help needed I am unable to grow my business to support the help I need. Unless I can give someone guarantees of potential earnings there is no incentive to relocate.

**I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury**

DATED this 18<sup>th</sup> day of February, 2014.

  
Jeffrey Linders  
EA#98710-ea

IN THE COURT OF APPEALS OF THE STATE OF OREGON

**OREGON SOCIETY OF ENROLLED AGENTS,**

Petitioner,

v.

**STATE OF OREGON, acting By and Through the STATE BOARD OF TAX PRACTITIONERS,**

Respondent.

Case No. \_\_\_\_\_

**DECLARATION OF DEBRA SHEEHAN**

I, Debra Sheehan, hereby declare:

1.

My name is Debra Sheehan. I am over 18 years old and I understand and intend that this Declaration be used in court. I have personal knowledge of all of the facts stated in this declaration. I am an enrolled agent # 69797 and Oregon licensed tax consultant #5884C and I have an active practice at my company Beaver creek Tax Service. My firm is in Clackamas County Oregon. I am a member of OrSEA.

2.

Part of my business is teaching a class for people studying to be Enrolled Agents

3.

Since the passage of the Oregon Rule OAR 800-020-0015 by the Oregon Board of Tax  
Page 1

Practitioners I have seen enrollment in my class drop.

4.

I have, and likely will continue, to lose revenues because of that rule.

**I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.**

DATED this 3 day of ~~February~~<sup>March</sup>, 2014.



Debra Sheehan  
EA#69797  
Oregon LTC #5884C

House Committee, Business & Labor  
Oregon State Board of Tax Practitioners  
On HB 2214

**Issue no. 1:** Employees of attorneys at law are subject to licensure by the board.

**Background:** The board currently exempts from licensure Certified Public Accountant, Public Accountants and Public accounting firms registered in Oregon. We also exclude the employees of CPAs, PAs, or registered public accounting firms. The board also exempts any attorney at law rendering services in the performance of the duties of an attorney at law.

**Requested change:** The Board seeks to add to this list of those exempt from licensure the employees of an attorney at law.

**Stakeholders:** The Oregon State Bar has submitted to this committee their support of this bill.

**Issue no. 2:** Enrolled Agents with little or no actual experience preparing income tax returns are allowed, after passing the Board's exam, to become licensed as a Tax Consultant and work without any supervision and, in fact, supervise Licensed Tax Preparers.

**Background:** The normal route to becoming a Licensed Tax Consultant requires an individual to work a minimum of 1,100 hours in preparing, advising or assisting in the preparation of personal income tax return under the supervision of more experienced tax practitioners and pass a 200 question board administered exam. An alternate route to become a Licensed Tax Consultant is to pass the federal Enrolled Agent Exam and pass the 50 question consultant state only exam administered by the board. Currently there are no statutory requirements to have any experience preparing income tax returns if one has passed the Enrolled Agent exam.

**Requested change:** The board seeks to require Enrolled Agents to verify they have at least 360 hours of experience preparing, advising or assisting in the preparation of personal income tax returns to qualify to take the Oregon Consultant State Only exam. The board believes this change is in the best interest to consumers in Oregon. There is no substitute for real life experience. Although a person may be book smart and able to pass both the federal and state exams, their lack of actual experience poses a risk to consumers.

Although this will affect a small number of Enrolled Agents taking the Consultant State Only exam the additional requirement ensures consumers the Licensed Tax Consultant has not only the basic knowledge of tax law by having passed 2 tests by has acquired a minimal level of actual experience preparing income tax returns.

# Oregon State Board of Tax Practitioners

## Board Meeting Minutes

**Meeting Date:** May 9, 2013

**Time:** 9:07 a.m. – 4:00 p.m.

**Location:** Morrow Crane Building, Salem, Oregon

**Attendees:** Janis Salisbury (Board Chair)  
 Jess Gutierrez (Vice-Chair)  
 Dorothy Hudson (Board Member)  
 Toni Ellsworth (Excused)  
 Michael Addington (Board Member)  
 Nutan Arora (Board Member)  
 Kelly Gabliks (DOJ)

**Guests:** Nancy Hubbard, OSTC  
 Ira Rosenberg, ORSEA  
 Susan Parks, OAIA  
 Linda Thomas

**Staff:** Ron Wagner, Executive Director  
 Monica J. Walker, Senior Compliance Specialist  
 Jane Billings, Exam & Education Coordinator  
 Marika Garvey, Licensing Specialist

ITEM	ACTION / DISCUSSION
Salisbury called the meeting to order at 9:07 a.m.	
New Board Members	Salisbury swore in the two new Board Members, Michael Addington and Nutan Arora.
Roll called	Board members present: Hudson, Addington, Gutierrez, Arora, Lovato, and Salisbury. Excused: Ellsworth.
<b>Executive Session Review of Case Files</b>	
<small>To discuss information exempt from public disclosure under ORS 673.730(3). Pursuant to 192.660(2)(f). This Executive Session is closed to members of the public.</small>	
Executive Session 9:09 a.m. - 11:48 a.m.	
Chair Comments	Judith Wilkins long-time representative of the OATC sustained a minor stroke and will no longer be representing her association at Board meetings.  Twyla Lawson from HR and Pete Fairhurst from NIC will be attending our meeting later today.
<b>Compliance Report</b>	
Reported by Monica J. Walker	Complaints reported from January 1, 2013 through May 2, 2013. General statistics:  <i>22 Cases reported on during Executive Session</i> <i>10 Cases needing Board action/vote</i>  <b>General statistics</b> <u>82 Total complaints as follows:</u> 25 Open investigations 13 Pending Investigations 6 Mediated

## Oregon State Board of Tax Practitioners Board Meeting Minutes

	<p>38 Closed</p> <p><i>Out of these totals</i> 14 Complaints in which licensees were educated into compliance</p> <p><b>Waivers to be voted on</b> 2 DC/RC Waivers needing Board action/vote</p> <p><b>General counts/information on complaints</b> 30 Unlicensed/unregistered activity 17 Advertising 5 Other entities 15 Competency/Services 7 Return of records 8 DC/RC/supervision requirements 2 Fraudulent activity 2 Failure to notify of changes to information 3 Failure to file a return 2 Confidentiality 2 CE audit requirements 1 Signature requirements 0 Posting of fee schedules</p> <p><b>Settlement Agreement Update/Status</b> <i>Accounts paid in full: Bumblebee Same Day Tax Service, Steven Townsend, and Jamasa Sattler.</i> <i>On payment plan with the Board: Tirsia Villanueva Fong-Guien, Albert Bentley, Damon Mayer, Daria Nelson, Fausta O. Garcia, Pamela Miles, and William Baumeister.</i></p> <p><b>Other Compliance Business</b> Brainstorm scenario: A practitioner calls regarding errors on a return he prepared. He questions if there is a procedure for reporting errors, or requirements or regulations regarding this. How should the Board characterize this oversight? What should be the proper response? Walker noted that up until now she asks for self reporting to be written and added to licensee's file for future information. Wagner stated his perspective and voiced concerns. After some discussion, it was the Board's consensus that licensees generate errors throughout the course of their career and no additional action or response from the Board should be exercised. The Board felt that staff could add a note in the comment field of the individual's record, and have the licensee make a copy and correction/amendment for client. Walker can suggest including deficient subject matter in the licensee's continuing education plans. Lovato suggested this be a topic for the newsletter.</p>
<b>Notices of Intent</b>	
Abdikadir Mohamud Portland, OR	<b>Motion:</b> Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Abdikadir R. Mohamud of Portland, Oregon for:

## Oregon State Board of Tax Practitioners Board Meeting Minutes

	<p>One (1) violation of ORS 673.643(1) and OAR 800-025-0020(1) for failing to register a tax preparation business at \$100; and</p> <p>Four (4) violations of ORS 673.700(7) and OAR 800-010-0050 for advertising in the form of printed, broadcast or electronic material that makes known professional tax services at \$100 per violation.</p> <p>Motion passed. Ayes: Lovato, Salisbury, Arora, Hudson, Gutierrez, and Addington. Ellsworth excused.</p>
Dorothy Hernandez Salem, OR	<p><b>Motion:</b> Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Dorothy “Dottie” Hernandez of Salem, Oregon for:</p> <p>Five (5) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure at \$5,000 per violation; and</p> <p>Six (6) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business at \$5,000 per violation.</p> <p>Motion passed. Ayes: Arora, Addington, Hudson, Gutierrez, Lovato, and Salisbury. Ellsworth excused.</p>
Ekaterina Bodunov Mt. Angel, OR	<p><b>Motion:</b> Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Ekaterina Bodunov of Mt. Angel, Oregon for:</p> <p>Ten (10) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure at \$500 per violation; and</p> <p>Two (2) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business at \$100 per violation.</p> <p>Motion passed. Ayes: Arora, Addington, Hudson, Lovato, and Gutierrez. Nays: Salisbury. Ellsworth excused.</p>
Jay Jones Woodburn, OR	<p><b>Motion:</b> Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Jay R. Jones of Woodburn, Oregon for:</p> <p>Thirty-seven (37) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure at \$500 per violation; and</p> <p>Three (3) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business at \$100 per violation.</p> <p>Motion passed. Ayes: Lovato, Addington, Salisbury, Arora, Gutierrez, and Hudson. Ellsworth excused.</p>
Riverbend Tax Service, LLC/	<p><b>Motion:</b> Gutierrez moved that that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Riverbend Tax Services LLC dba H &amp; R</p>

## Oregon State Board of Tax Practitioners Board Meeting Minutes

Robert McAllister Bend, OR	<p>Block/Owner: Robert Alan McAllister of Bend, Oregon for:</p> <p>Two (2) violations of ORS 673.643 and OAR 800-025-0030(5), for failing to report changes to a branch office within 15 business days of the change at \$100 per violation.</p> <p>Motion passed. Ayes: Hudson, Salisbury, Gutierrez, Arora, and Addington. Nays: Lovato. Ellsworth excused.</p>
LeMarcia Nelson Bend, OR	<p><b>Motion:</b> Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to LeMarcia A. Nelson of Bend, Oregon for:</p> <p>Two (2) violations of ORS 673.643 and OAR 800-025-0030(5), for failing to report changes to a branch office within 15 business days of the change at \$100 per violation.</p> <p>Motion passed. Ayes: Gutierrez, Salisbury, Hudson, Addington, Arora, and Lovato. Ellsworth excused.</p>
Jerry Schmidt Sherwood, OR	<p><b>Motion:</b> Gutierrez moved that that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Jerri G. Schmidt of Sherwood, Oregon for:</p> <p>Five (5) violations of ORS 673.700(7) and OAR 800-010-0050(6) and (7) for advertising in the form of printed, broadcast or electronic material without including the Board issued business registration number, the designated licensed tax consultant number or the LTC/LTP license number at \$250 per violation.</p> <p>Motion passed. Ayes: Hudson, Lovato, Addington, Arora, Gutierrez, and Salisbury. Ellsworth excused.</p>
Liza Kaganov Portland, OR	<p><b>Motion:</b> Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Liza S. Kaganov of Portland, Oregon for:</p> <p>Two (2) violations of ORS 673.700(7) and OAR 800-010-0050(6) and (7) for advertising in the form of printed, broadcast or electronic material without including the Board issued business registration number, the designated licensed tax consultant number or the LTC/LTP license number at \$250 per violation.</p> <p>Motion passed. Ayes: Salisbury, Gutierrez, Hudson, Arora, Lovato, and Addington. Ellsworth excused.</p>
Marisela Rodelo Boardman, OR	<p><b>Motion:</b> Gutierrez moved that that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Marisela Rodelo of Boardman, Oregon for:</p> <p>All violations of ORS 673.615(1), found for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure at \$500 per violation; and</p> <p>One (1) violation of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business at \$100 per violation.</p> <p>Motion passed. Ayes: Addington, Gutierrez, Hudson, Arora, Salisbury, and Lovato.</p>

# Oregon State Board of Tax Practitioners

## Board Meeting Minutes

	Ellsworth excused.
<b>Possible Withdrawal of Action</b>	
Paula Dougharity Baker City, OR	<p><b>Motion:</b> Due to her passing on November 18, 2012, Gutierrez moved that the Board withdraw their motion to impose Discipline upon Paula J. Dougharity of Baker City, Oregon for:</p> <p>Three (3) violations of ORS 673.615(1), found for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure at \$250 per violation;</p> <p>One (1) violation of ORS 673.643(1) and OAR 800-025-0020(1) for failing to register a tax preparation business at \$100; and</p> <p>One (1) violation of ORS 673.700(7) and OAR 800-010-0050 for advertising in the form of printed, broadcast or electronic material that makes known professional tax services at \$50.</p> <p>Motion passed. Ayes: Lovato, Hudson, Addington, Arora, Gutierrez, and Salisbury. Ellsworth excused.</p>
<b>Possible Settlement Agreement</b>	
Robert Dooley Cove, OR	<p><b>Motion:</b> Gutierrez moved that the Board enter into a Settlement Agreement and Stipulated Final Order with Robert G. Dooley of Cove, Oregon to assess civil penalties in the amount of \$250, pursuant to 673.700(1)(7) and 673.735(1) for:</p> <p>One (1) violation of ORS 673.705(1), for obtaining or attempting to obtain his initial tax preparer license by fraudulent representation; and</p> <p>One (1) violation of ORS 673.700(7) and OAR 800-010-0042, for failure to respond in writing to communications from the Board within 15 business days.</p> <p>Motion passed. Ayes: Addington, Gutierrez, Salisbury, Hudson, Lovato, and Arora. Ellsworth excused.</p>
Board Meeting Lunch 12:15 p.m. – 12:47 p.m.	
Monica J. Walker	LeMarcia Nelson was not on the list supplied to the representatives and the public.
Minutes	<p><b>Motion:</b> Hudson moved that the Board accept the January 10, 2013 minutes as drafted.</p> <p>Motion passed. Ayes: Arora, Addington, Hudson, Gutierrez, Salisbury, and Lovato. Ellsworth excused.</p> <p>Board meeting minutes are located on the Tax Board Web site at: <a href="http://www.oregon.gov/OBTP/Meeting_Minutes.shtml">http://www.oregon.gov/OBTP/Meeting_Minutes.shtml</a></p>
<b>Administration Report</b>	

## Oregon State Board of Tax Practitioners Board Meeting Minutes

<p>Reported by Ron Wagner</p>	<p>The projected revenue for the biennium to date, July 1, 2011 through March 31, 2013 is \$867,000. The actual revenue to date \$862,297. Our actual revenue to date is \$4,703 less than the projected revenue to date. The projected expenses for the biennium to date, July 1, 2011 through March 31, 2013 are \$974,000. The actual expenses to date are \$904,967. Our actual expenses to date are \$69,033 less than the projected expenses.</p> <p>The building lease has been renegotiated. Morrow has put in new carpet and painted. New cabinets will be purchased for the back wall. Some items will be surplus and a set of three height adjustable tables will be purchased. Total expenditures will be around \$9,000.</p> <p>The Board's legislative work session on Monday was cancelled because there wasn't a quorum of senators. One piece of legislation the Board pre-session filed was to include employees of attorneys to the list of those excluded from our licensing laws. Also added as an amendment was the minimum 360 hour work experience requirement to take the enrolled agent exam. The bill with these provisions did not make it out of committee, thus will not become law. The Board members would like to retain the 360 hour requirement regardless of the absence of the requirement in the statutes. The Board has the requirement included in the Oregon Administrative Rule. The Board was simply wanting to add the requirement to the Oregon statutes. But the lack of wording in the statutes does not negate the authority of the rule.</p> <p>The office computers have been upgraded to Windows 7 and the software to Microsoft Office 2013.</p>
<p>Reducing Fees</p>	<p>Wagner talked about reducing the Board's ending balance by reducing fees, and since this would take effect in the new biennium this decision could be made at any time. The Board discussed the impact of reducing fees and where the reductions could be made.</p> <p><b>Motion:</b> Hudson moved that the Board reduce the license fees for the LTC, LTP, business registration and the combo registration each by \$10 per year for license renewals effective August 1, 2013.</p> <p>Motion passed. Ayes: Hudson, Addington, Lovato, Arora, Gutierrez, and Salisbury. Ellsworth excused.</p>
<p><b>Executive Recruitment</b></p>	
<p>Twyla Lawson</p>	<p>Twyla Lawson is a senior recruiting specialist for the state. Our current Executive Director, Ron Wagner, has announced his retirement effective June 30, 2013. Lawson attended the meeting to discuss with the Board members the process to recruit and hire a new Executive Director. Lawson described the documents for Board members; standards and criteria that will be used to do the recruitment, state policies and guidelines, and a document about public meeting law and how the process needs to be transparent, and why things need to be done the way they do. An announcement is required, which has been already drafted, including the desired attributes and the required state minimum qualifications. She shared a recruitment plan which gives a timeline of everything that will happen. Lawson reviewed the documents and</p>

# Oregon State Board of Tax Practitioners

## Board Meeting Minutes

	<p>explained more about how the process typically works, including checking references, the interview process, and taking public comment. She asked that any questions or comments go to her.</p> <p><b>Motion:</b> Addington moved that the Board adopt the plan as presented.</p> <p>Motion passed. Ayes: Salisbury, Arora, Gutierrez, Hudson, Lovato, and Addington. Ellsworth excused.</p> <p>Wagner shared that he would be available through August when the new Executive Director takes over.</p> <p>Addington, Salisbury and Hudson volunteered to be on the hiring panel.</p>
<b>Public Comment</b>	
There were no public comments.	
<b>NIC</b>	
Pete Fairhurst	Fairhurst provided the Board members with background information about NIC and the proposed work related to setting up online registration for renewals and exam applications.
Board Meeting Break 2:20 p.m. - 2:30 p.m.	
<b>Administration Report (continued)</b>	
Reported by Ron Wagner	<p>Wagner publicly welcomed the new Board members Michael Addington and Nutan Arora. A name was forwarded for the public member, and he expects to have that position filled by the next Board meeting.</p> <p>He also provided a wonderful example of what staff would like from licensees, by sharing a letter notifying the Board that the licensee would be traveling outside of the United States and would not be able to be reached for a limited time period.</p>
<b>Licensing Report</b>	
Statistics reported by Marika Dwyer	There is an increase in consultant licenses, initial consultant licenses, and business registrations opened compared with the same time period last year. Hudson commented that the numbers are relative because of the comparison, and that it looks like there are 100 less preparers than last year. She speculated whether the numbers were down because the preparers became consultants.
<b>Exam and Education Report</b>	
Exam Update by Jane Billings	<p>Wagner and Billings realized that the query the database was using to provide exam statistics was not accurately calculating exam pass rates, and asked the contractor to do some adjustments. It was calculating retake exams as first time test takers. Billings went back to 2008 and adjusted all the records, and now the corrected version is out on the Web. The year-to-date pass rate percentages are: preparers 53%, consultants 35%, consultant-state-only 64%.</p> <p>In 2012 a total of 568 took the preparer exam with a 58% pass rate for the year,</p>

## Oregon State Board of Tax Practitioners Board Meeting Minutes

	<p>decreasing from 64% in 2011. There were 103 who took the consultant exam with a 30% pass rate, increasing from 23% in 2011. And 85 took the consultant-state-only exam with a final pass rate for the year of 58%, down from 67% in 2011.</p> <p>Billings included handouts for the annual period between March 1, 2012 to February 28, 2013, reflecting pass rates of 60% for preparers, 35% for consultants, and 60% for consultant-state-only exams. There were 697 total examinees, including retakes, with a total overall pass rate of 56%. The highest score received on each exam for exams taken in November 2012 to February 2013 was 97%.</p> <p>The Board members were also provided instructor pass rates calculated between March 1, 2011 and February 29, 2012 along with a cumulative listing of instructor pass rates reflecting the current year along with the past 3 years. Pass rate letters were mailed out to individual instructors in early March.</p> <p>While reviewing the issues with prior statistical reports, it generated discussion about the time frame that the results are calculated. Wagner questioned why the exam final reports, which include the instructor pass rates, general pass rates and highest scores, are calculated from the period of March 1 to February 28, and not by the actual exam period. He thought it would be more meaningful if the reports covered the period when everyone took the same exam. Consultant exam release date is August 1<sup>st</sup>, and preparer exam release is September 1<sup>st</sup> (gap of new/old for first few weeks). The alternate calculations period to consider:          Consultant – August 1<sup>st</sup> to July 31<sup>st</sup>/Preparer – September 1<sup>st</sup> to August 31<sup>st</sup>. The Board would like to see both time frames calculated next year to better make a determination of their preference.</p> <p>The Board's review of the question and comment forms resulted in three people passing and 69 other scores being positively affected.</p>
Proctor Sites	<p>Proctor site inter-agency agreements were mailed at the end of March. Billings included notification of the proctor site fee increase to \$60 that the Board approved, along with information regarding the change or reduction in allowable source documents for the preparer exams effective September 1, 2013. There are a number of proctor sites that have increased fees based on this.</p> <p>Billings was able to make two proctor site visits to LBCC and CCC. There is a possible new proctor site in McMinnville (CCC Campus), but PCC-SE will no longer be a proctor site. PSU, Phoenix, and Warner Pacific were suggested substitutes that Billings will contact. She considered private franchises, such as Sylvan Learning Centers, but they were very expensive.</p> <p>Walker suggested renting the rooms and having staff administer the exam at PSU, if needed. Gabliks suggested using the Portland State Building as well because it has rooms available and examinees could ride the MAX, and not have to worry about parking.</p>
Sponsor Renewals	<p>The CE sponsor renewals and 80-Hour Basic Tax Course sponsor applications were mailed out at the end of March. These were sent out early with the hope they would take care of DOE requirements in plenty of time to get approval through them since</p>

## Oregon State Board of Tax Practitioners Board Meeting Minutes

	<p>DOE turn-around time is longer than the Board's.</p> <p>The two continuing education sponsors of self-study/correspondence courses currently on the Board's list (since they are not currently approved through CTEC, NASBA or IRS) have been sent renewal applications to complete.</p>
CE Audits	<p>Billings would like to officially close the consultant and preparer 2012 CE audits. The consultant audit consisted of 209 consultants, and notification was sent at the beginning of August. There were three licensees pulled for audit whose license had not been renewed by March 1<sup>st</sup> and remained in lapsed status. There were also two licensees who retired their licenses. The preparer audit consisted of 192 preparers, and notification was sent out on October 26, 2012 to licensees who had renewed. Licensees who had not yet renewed their licenses were notified as they renewed. At the conclusion of the audit there were 18 individuals whose licenses remained in lapsed status and two that had retired their licenses.</p>
Item Writing Committee and Board Work Session	<p>Twenty volunteers came and worked together to review and update the LTC exam questions. They were a fun and hard-working group of individuals with a mix of new and experienced volunteers. Thank you to those who volunteered. Volunteer comment sheets were included in the Board binders. What comes up every year for the Consultant Item Writing Committee is whether the CE earned from volunteering on the Committee could be acceptable for the following year's renewal, even though the hours were accumulated prior to May 1<sup>st</sup>. Most volunteers already have their CE for the current renewal period.</p> <p>Thank you to the two volunteers for the Board's work session, Laurie Miles and Shigeyo Kikuchi. Twenty-two new questions were approved, and Board members wrote 13 additional new questions, and added Form 8801 and instructions to the list of source documents.</p> <p><b>Motion:</b> Lovato moved that the Board accept the changes and additions made to the consultant exam pool of questions discussed at the Board's work sessions held on May 7<sup>th</sup> and 8<sup>th</sup> 2013, and to include Form 8801 and instructions to the list of source documents effective September 1, 2013.</p> <p>Motion passed. Ayes: Addington, Gutierrez, Salisbury, Lovato, Hudson, and Arora. Ellsworth excused.</p> <p>The Preparer Item Writing Committee will meet for two days on June 12<sup>th</sup> and 13<sup>th</sup>. Twenty enthusiastic volunteers have already been recruited and are ready to get down to work reviewing all the questions in the preparer exam pool.</p>
Compiling the Consultant Exam	<p>Barb Jenkins, the Board's Exam Consultant, will come to the Board office on May 22<sup>nd</sup> and 23<sup>rd</sup> to pull questions for four versions of the consultant exam, which Billings will then compile. Then on June 20<sup>th</sup> four volunteers that have already been selected will come to the Board office to take a version of the consultant exam and meet with Barb.</p>
Instructor Workshop	<p>The location selected is Clackamas Community College in Wilsonville, and the date confirmed Wednesday, August 14, 2013.</p>

## Oregon State Board of Tax Practitioners Board Meeting Minutes

	<p>Billings has contacted the members of the Exam &amp; Education Committee with some ideas the Board has thrown around since the last Workshop, and has been hoping to get some interest from instructors or graduate students at Portland State University, Willamette University, and Western Oregon in Monmouth. E-mails were also sent to speakers affiliated with Brown Bag CPE, Oregon Society of Certified Public Accountants, OATC, OSTC, OSE, and 80-Hour Basic Income Tax Course sponsors.</p> <p>Walker had recommended contacting Lucy Gardner from Leadership Oregon who unfortunately is unable to help because of prior commitments, but provided the names of 3 other possible speakers: Rich Galvez (previous speaker -unavailable), Sue Wilson and Mike Marsh. Billings initially received a response back from last year's speaker, Robin Gilley, expressing interest; however she has since realized she is unavailable.</p> <p>In anticipation of the Board expanding on last year's segment where current instructors shared their own personal teaching techniques and methods for motivating their students, Billings has sent e-mails to 24 instructors of the 80-Hour Basic Course with higher pass rates.</p> <p>Kirkwood Donavin, a licensee and instructor at Lane Community College, is considering doing a 2-3 hour segment in the afternoon. He is working on a proposal for the Board to review. Jennifer Webster, PhD, recommended by Sue Wilson, has shown an interest. Her resume and proposed outline was shared with the Board members.</p> <p>Billings will personally ask some of the instructors with higher pass rates to speak for ten minutes about what they feel makes their class successful and students more apt to pass the exam. She clarified that the Board would like a Board panel for questions at the end.</p> <p>The members agreed to pursue Jennifer Webster for a half a day, and will firm up the plans for the afternoon at the next Board meeting.</p>
<b>Waiver Requests</b>	
Judd Conway Hillsboro, OR	<p><b>Motion:</b> Hudson moved to accept the designated consultant waiver request for Judd Conway of Hillsboro, Oregon through May 31, 2013, per the Business Practices Committee's temporary approval issued on January 29, 2013.</p> <p>Motion passed. Ayes: Hudson, Addington, Gutierrez, Arora, Lovato, and Salisbury. Ellsworth excused.</p>
Teresa Noe Gresham, OR	<p><b>Motion:</b> Hudson moved to accept the designated consultant waiver request for Teresa L. Noe of Gresham, Oregon through May 31, 2013, per the Business Practices Committee's temporary approval issued on February 6, 2013.</p> <p>Motion passed. Ayes: Gutierrez, Arora, Lovato, Salisbury, and Hudson. Nays: Addington. Ellsworth excused.</p>
<b>Chair Elections</b>	

## Oregon State Board of Tax Practitioners Board Meeting Minutes

Board Chair	<p><b>Motion:</b> Gutierrez made a motion to nominate <b>Janis Salisbury</b> to remain as Board Chair.</p> <p>Motion passed. Ayes: Gutierrez, Arora, Lovato, Hudson, and Addington. Ellsworth excused. Salisbury abstained from the vote.</p>			
Board Vice-Chair	<p><b>Motion:</b> Gutierrez made a motion to nominate <b>Joe Lovato</b> as Board Vice-Chair.</p> <p>Motion passed. Ayes: Gutierrez, Arora, Salisbury, Hudson, and Addington. Ellsworth excused. Lovato abstained from the vote.</p>			
<b>Other Business</b>				
Committees Assignments	Administration	Janis Salisbury* Joe Lovato Public Member	Complaint	Jess Gutierrez* Dorothy Hudson Michael Addington
	Business Practices	Dorothy Hudson* Michael Addington Public Member	Exam & Education	Joe Lovato* Janis Salisbury Nutan Arora
Roster Updates	Salisbury will update her address to Oregon City, and Addington would like NTPI Fellow added after his name on the Board roster.			
Hiring Panel	Janis Salisbury, Dorothy Hudson, Michael Addington			
Tax Board Bulletin Newsletter	<p>Newsletter articles assignments:</p> <p>Joe - Military subtractions; good CE choices</p> <p>Dorothy - Be a whistle blower/turning in the bad guys</p> <p>Jane - CE hours accumulation if in lapsed or ineligible status</p> <p>Monica - From the compliance desk</p> <p>Ron - From the director's desk</p> <p>Janis - If you discover errors on returns, what are you required to do?</p> <p>Nutan - Not relying on your software; need to review Oregon sections for CE; five things your software doesn't do</p> <p>Jess - DC responsibility for business</p>			
<b>Adjournment</b>	Salisbury adjourned the Board meeting at 4:00 p.m.			

### Next meeting:

July 11, 2013

Morrow Crane Building, Salem, Oregon